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LAW OFFICES OF WILLIAM H. HOLT
12311 Harbor Drive
Woodbridge, VA 22192

In re Application of :
McCAUSLAND *et al* :
U.S. Application No.: 10/591,795 :
PCT No.: PCT/GB2005/00812 :
Int. Filing Date: 03 March 2005 :
Priority Date: 06 March 2004 :
Attorney Docket No.: McCAUSLAND-15819 :
For: REMOVAL OF SODIUM OXALATE :
FROM A BAYER LIQUOR :

DECISION

This decision is in response to applicants' renewed petition under 37 CFR 1.47(a) filed 24 June 2008.

BACKGROUND

On 21 April 2008, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed. Applicants were given two months to respond.

On 24 June 2008, applicants filed the renewed petition which was accompanied by, *inter alia*, a declaration of facts by Peter Mansfield and assorted documentary evidence in support of the petition.

DISCUSSION

As previously noted, a petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventor.

Item (2) was not satisfied in the initial petition as the 37 CFR 1.47(a) applicants did not provide a statement of facts from the person who presented the application papers as required by the MPEP. Moreover, the 37 CFR 1.47(a) applicants did not show that a complete copy of the application, including specification, claims and drawings was given to the nonsigning inventor.

In the renewed response, the 37 CFR 1.47(a) applicants submitted a declaration of facts by Peter T. Mansfield, a Chartered Patent Attorney in the U.K. as requested detailing the efforts to obtain the signature of Linda McCausland. Mr. Mansfield

included sufficient documentary evidence to corroborate the details given in the statement of facts.

Regarding the failure to show that a complete copy of the application, including specification, claims and drawings was given to the nonsigning inventor, Mr. Mansfield noted that the original PCT application including claims and drawings was sent to each inventor. Since the PCT application became the national stage document submitted for filing, Mr. Mansfield did not send a "second copy of the specification" along with the declaration for signature, "as each inventor already had a copy."

Applicants' argument on this regard has been carefully considered and dismissed. Section 409.03(d)(II) of the MPEP requires that a copy of the application be presented to each inventor for a refusal to be accepted. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956). The inventor is required to execute the declaration under penalty of law stating that he or she has reviewed the specification, including the claims and any amendments of the application.

Here, it is not reasonable to expect that the inventor sign the declaration when the papers presented do not include a complete copy of the current application to which the declaration is directed. It is also not reasonable to expect that each inventor has (at hand) a copy of the original PCT application to review if the international application was given to them months ago.

Petitioner must provide a complete copy of the subject application, including specification, claims, declaration and drawings to Ms. McCausland for the refusal to be accepted. Failure to reply by the nonsigning inventor after a reasonable period would constitute a reasonable basis to conclude that a refusal has occurred. Documentary evidence of this presentation is also required in any renewed petition.

For this reason, item (2) of 37 CFR 1.47(a) is still not yet satisfied.

CONCLUSION

Applicants' renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available.

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The change of the last known address of Ms. McCausland has been noted.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in cursive script that reads "James Thomson".

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302